

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**KELSEY ALEXANDER**

**APPELLANT,**

**v.  
UMB BANK, NA, TRUSTEE OF THE  
DARTHEA STODDER HARRISON TRUST,  
ET AL.; JODI LEA STODDER**

**RESPONDENTS.**

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DOCKET NUMBER WD79378

DATE: August 23, 2016

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Appeal From:

Jackson County Circuit Court  
The Honorable Kathleen A. Forsyth, Judge

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Appellate Judges:

Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

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Attorneys:

Miriam E. C. Bailey, Kansas City, MO, for appellant.

Angela G. Nichols, Kansas City, MO, for respondent UMB Bank, NA.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**KELSEY ALEXANDER,**

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DARTHEA STODDER HARRISON TRUST,  
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**RESPONDENTS.**

No. WD79378

Jackson County

Before Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Kelsey Alexander appeals from a judgment denying her petition to construe a trust to require distribution to the descendants of the settlor's deceased brothers' children. We agree that the trust created a remainder interest in settlor's deceased brothers' children that was descendible and that was not subject to the condition of survival.

**REVERSED AND REMANDED**

Division Two holds:

1. The remainder interest in favor of settlor's brothers' children was a contingent remainder, as the interest was to take effect upon two dubious and uncertain events: (i) settlor's son dying without bodily issue, and (ii) one or both of settlor's brothers predeceasing the trust's termination.

2. A contingent remainder interest is descendible by devised or by intestate descent.

3. There is an exception to this general rule for remainder interests conditioned on survival, where the interest is completely lost if a beneficiary fails to survive until the preceding interests are terminated and the time has come for the beneficiary to possess and enjoy the property. In such a case, the remainder interest (whether vested or contingent) is not descendible through an estate or by intestacy

4. The trust does not express survival as a condition of the remainder interest in favor of settlor's brothers' children. A requirement of survival is never implied in the absence of specific language giving rise to the implication.

5. This general rule is in tension with the general rule that a settlor is presumed to use language in its ordinary and normal sense. A devise to children generally reflects the intent to devise only to the immediate descendants of the first degree of the named ancestor.

6. Decisional law has resolved the conflict between these two principles. The law favors early vesting of testamentary gifts and unless a contrary intent appears, interests created by a trust are to be construed as vested rather than contingent. And a trust will be construed in favor of heirs of the settlor and an heir will not be considered as disinherited except by express words or necessary implication. These rules have been applied to reach the conclusion that a remainder limited to a class consisting of children vests in such of the children as are in being at the time a trust takes effect, subject to being opened to let in afterborn children.

7. The result is no different when a remainder interest is contingent on events that may render the remainder interest less than certain to occur. A condition of survival is not to be implied merely because a future interest is subject to an express condition other than survival.

8. Settlor is presumed to have known and understood these accepted principles when she executed her trust. We conclude that settlor intended the remainder interest in favor of settlor's brothers' children, whether characterized as contingent or vested, to be descendible by estate or intestacy, and not conditioned on survival.

Opinion by Cynthia L. Martin, Judge

August 23, 2016

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